

STATE OF NEW MEXICO
BEFORE THE ENVIRONMENTAL IMPROVEMENT BOARD

IN THE MATTER OF
PROPOSED REVISIONS TO THE LIQUID
WASTE DISPOSAL AND TREATMENT FEE
REGULATIONS, 20.7.11 NMAC (FEES)

No. EIB 11-08(R)



**STATEMENT OF REASONS FOR ADOPTION OF PROPOSED REVISIONS AS
AMENDED BY THE BOARD**

This matter came before the New Mexico Environmental Improvement Board ("Board") upon a petition filed pursuant to 20.1.1 NMAC by Link Summers to amend 20.7.11 NMAC of the Liquid Waste Disposal and Treatment Fee Regulations. Mr. Summers's seeks to amend 20.7.11 NMAC to clarify various definitions and to provide accurate accounting and accountability in the liquid waste program.

At the Board's Regular Meeting on July 11-12, 2011, the Board considered a motion by the New Mexico Environment Department ("Department") to dismiss part of the Petition. The Board voted to grant the Motion to Dismiss with respect to 20.7.11.12 and 20.7.11.14 NMAC regarding penalties and to deny all other parts of the motion to dismiss.

A public hearing was held in Santa Fe, New Mexico on August 1, 2011 through August 2, 2011 with a quorum of the Board present during the hearing. Felicia Orth served as hearing officer for the purpose of conducting the hearing.

Prior to taking technical testimony, the Board heard preliminary matters including the Department's Motion to Strike All or Part of Petitioner's Notice of Intent and Petitioner's Motion to Strike Department Testimony. The Board took Petitioner's Motion to Strike under advisement asking Petitioner to present his arguments in the hearing itself. As to the Department's Motion to Strike, Petitioner withdrew his six recommendations rendering that part

of Petitioner's Motion moot. The Board denied the rest of the motion allowing the hearing to proceed.

The Board heard technical testimony from the Petitioner, Department, Eugene Bassett and admitted exhibits into the record. After the conclusion of the hearing, the Board deliberated and made amendments to the proposed revisions.

The Board's decision was based on the entire record in this matter, which includes the transcript of the hearing, Petitioner Exhibits 1 through 11; NMED Exhibits 1 through 32; Eugene Bassett Exhibit 1 and Petitioner's Rebuttal Exhibits 1 through 5.

Pursuant to 20.1.1.406(E) NMAC the Board issues this Statement of Reasons in support of its decision:

1. The Board has the authority to amend the Liquid Waste Rules under the Environmental Improvement Act, NMSA 1978, Section 74-1-8(A)(3).
2. In accordance with NMSA 1978, Section 74-1-9(D), 20.1.1.301 NMAC and other state law, a Notice of Public Hearing for the proposed regulations was properly published in the New Mexico Register, the official publication for notices of all rulemaking in New Mexico, on May 31, 2011; and in the Albuquerque Journal, a newspaper of general circulation, on May 27, 2011. *See* NMED Exhibit 30.
3. All persons present at the hearing were given an opportunity to make a statement regarding the proposed regulations, and to cross-examine all witnesses.
4. Link Summers and Eugene Bassett provided support for the proposed revisions. These proposed revisions are included in Petitioners April 15, 2011 Petition for Public Hearing. The Board struck part of the proposed revisions to 20.7.11.12 and 20.7.11.14 NMAC dealing

with penalties. Mr. Summers included six additional suggestions in his Notice of Intent but withdrew them at hearing.

5. Carol Parker of the Office of General Counsel, Ed Smith, Barbara MacClellan, Roberta Vigil, Dennis McQuillan, Brian Schall and Tom Brandt provided support for the Department's proposed changes. The Department's proposed changes are included in the Department's Notice of Intent filed on July 18, 2011.

6. Public comment was received from Mickey J. Duesterbeck and Edrynn Mestas.

7. The Board amended 20.7.11.6 to read as follows:

The objective of this rule is to provide for liquid waste treatment and disposal fees for the administration of the state liquid waste regulations. The purpose of the state liquid waste treatment and disposal program is to protect the health and welfare of present and future citizens of New Mexico by providing for the prevention and abatement of public health hazards and surface and ground water contamination from on-site liquid waste disposal practices.

This change was made to bring the language in line with the Environmental Improvement Act. Petitioner's change to add the word "education" was rejected because the Board felt the proper place for the topic is in 20.7.3.904 NMAC. The phrase "and operation" was stricken because it already falls within the definition of "administration." The reference to meeting expenses was deleted as well because it is not addressed in the statute.

8. The Board amended the definition of "alternative system" in 20.7.11.7(B)(2) to read:

"alternative system" means any on-site liquid waste system utilizing a method of liquid waste treatment and disposal used in lieu of a conventional system, including modifications, that is recognized and allowed by 20.7.3 NMAC or by the New Mexico Design Standards;

The Board agreed with both Petitioner and the Department that the word "not" should be deleted.

The board moved the phrase "a conventional system" for the sake of clarity.

9. The Board struck the definition of “liquid waste” in 20.7.11.7(B)(6) NMAC because these terms are already defined in 20.7.3 NMAC. The Board declined Petitioner’s proposal to add animal excrement to the definition because it felt fee regulations were not the proper place for this to be addressed.

10. The Board struck the definition of “modify” in 20.7.11.7(B)(7) NMAC because the definition is already set forth in 20.7.3.7 NMAC. The Board rejected Petitioner’s proposal to add a new Subsection (g) dealing with the name of the person on the permit, as the appropriate place for handling a name change is not in a fee section.

11. The Board rejected Petitioner’s proposal to add a Subsection (10) to 20.7.11.7(B) NMAC dealing with the definition of the word “report” because it felt the proper place for this is in 20.7.11.14 NMAC “Periodic Review”.

12. The Board rejected Petitioner’s proposed changes to 20.7.11.9 NMAC because this section is directed to the amount of fees, and Petitioner’s proposed changes were directed to inspections.

13. The Board amended 20.7.11.14 NMAC to read as follows:

In order for the Environmental Improvement Board to fulfill its obligation to establish onsite liquid system fees in accordance with Section 74-1-8(A)(3), NMSA 1978, the department shall provide information by January 15th of each year to the Environmental Improvement Board as follows:

- A. Liquid waste fund revenues for the previous fiscal year;
- B. Liquid waste fund expenditures for the previous fiscal year;
 - (1) Personal services and benefits;
 - (2) Contracts;
 - (3) Other costs;
 - (4) Indirect;
- C. External audit report for the previous fiscal year;
- D. Current fiscal year budget for field operations bureau approved by the department of finance and administration and the legislative finance committee;
- E. Report on contiguous states’ fees;
 - (1) For Arizona, Oklahoma and Texas: report of state program

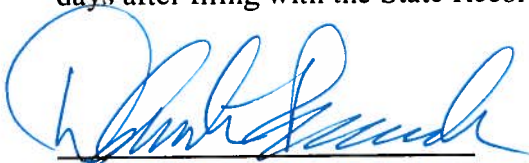
- fee schedules (although some Texas counties have their own fee schedules);
- (2) Colorado and Utah: report of fee schedule for each county or health district;
- F. Performance measures report for previous fiscal year;
- G. Copy of liquid waste annual strategic plan;
- H. Copy of training plan, if any, for the upcoming year.

The Board feels this information is necessary to fulfill its statutory obligation to set liquid waste fees. The information being provided by the Department is information the Department already gathers and the Department agreed that it could produce such documentation to the Board for its review.

ORDER

By a unanimous vote the Board adopted the foregoing changes to 20.7.11 NMAC.

Pursuant to NMSA 1978, Section 74-1-9(G) these revisions will not become effective until thirty days after filing with the State Records Center.



Deborah Peacock, Chair
New Mexico Environmental Improvement Board

11/9/11
Date